

IDAPA 17 - INDUSTRIAL COMMISSION

17.05.01 - RULES UNDER THE CRIME VICTIMS COMPENSATION ACT

DOCKET NO. 17-0501-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 72-1004 and 72-1026, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking implements new statutory authority for adopting a medical fee schedule for benefit payments under the Crime Victims Compensation Act.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1) (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rulemaking confers a benefit by enabling the Crime Victims Compensation Account funds to be used to benefit more injured victims of violent crime who are without the ability to pay for medical treatment.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted due to the large number of potential parties affected and the short period of time between passage of the statute and the need to have an effective cost-saving fee schedule in place.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact George Gutierrez at 208-334-6070.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 17th day of May, 2010.

Mindy Montgomery, Director
Industrial Commission
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Phone: (208) 334-6059
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THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 17-0501-1001

000. LEGAL AUTHORITY.

In accordance with Section 72-1004(1)(a), Idaho Code, the Industrial Commission shall promulgate rules implementing the provisions of ~~Sections 72-1001 through 72-1025~~ Chapter 10, Title 72, Idaho Code.

~~(7-1-93)~~(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Commission. Where appropriate, references to the Commission in these rules includes the Commission and its employees. (11-17-86)

~~02. Gender.~~ *Reference within these rules to the masculine shall also include the feminine.* ~~(11-17-86)~~

~~032. Wages and Employer.~~ The terms “wages” and “employer” shall mean the ~~wages and~~ employer at the time of the criminally injurious conduct on which the Application for Compensation is based.

~~(11-17-86)~~(7-1-10)T

043. Wages. ~~In addition to cash remuneration, #~~The term “wages” shall mean the wages at the time of the criminally injurious conduct on which the Application for Compensation is based and shall include non-cash remuneration such as lodging and meals provided by the employer and gratuities such as tips, which are not paid by the employer, but which are received by the victim in the normal course of his employment. ~~(11-17-86)~~(7-1-10)T

~~05. Vacation.~~ *Vacation pay shall not be considered a collateral source.* ~~(11-17-86)~~

064. Compensation. For the purposes of Section 72-1023(1), Idaho Code, the term “compensation paid under this chapter” shall include attorney’s fees awarded pursuant to Section 72-1006, Idaho Code. (11-17-86)

~~07. Welfare Benefits.~~ *Pursuant to Section 72-1003(8), Idaho Code, funds payable to or on behalf of an indigent person under Chapter 35, Title 31, Idaho Code, shall be considered welfare only in those cases involving criminally injurious conduct that occurred on or after July 1, 1996.* ~~(7-1-97)~~

05. Medical Services. Words and terms used for determining the allowable payment for medical services under these rules are defined in the Subsections 010.05.a. through 010.05.h. (7-1-10)T

a. “Allowable payment” means the lower of the charge for medical services calculated in accordance with this rule or as billed by the provider. (7-1-10)T

b. “Ambulatory Surgery Center (ASC)” means a facility providing surgical services on an outpatient basis only. (7-1-10)T

c. “Hospital” is any acute care facility providing medical or hospital services and which bills using a Medicare universal hospital billing form. (7-1-10)T

i. Large Hospital is any hospital with more than one hundred (100) acute care beds. (7-1-10)T

ii. Small Hospital is any hospital with one hundred (100) acute care beds or less. (7-1-10)T

d. “Provider” means any person, firm, corporation, partnership, association, agency, institution or

other legal entity providing any kind of medical service related to the treatment of a claimant for benefits under the Idaho Crime Victims Compensation Act. (7-1-10)T

e. “Medical Service” means medical, surgical, dental, mental health or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses, and related service, facility, equipment and supply. (7-1-10)T

f. “Reasonable” means a charge does not exceed the Provider’s “usual” charge and does not exceed the “customary” charge, as defined below. (7-1-10)T

g. “Usual” means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (7-1-10)T

h. “Customary” means a charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (7-1-10)T

011. APPLICATIONS FOR COMPENSATION.

01. Claim for Benefits. To claim benefits under the Crime Victims Compensation Act, the claimant shall file an Application for Compensation with the Commission. Applications for Compensation ~~by victims~~ shall be made using the form approved by the Commission ~~which is attached hereto as Appendix A. Applications for Compensation by dependents of deceased victims shall be made using the form approved by the Commission which is attached hereto as Appendix B.~~ An Application for Compensation shall be deemed filed when it is received at the Commission’s office in Boise. (H-17-86)(7-1-10)T

02. Providing Information. Before paying benefits to any claimant, the Commission shall gather sufficient information to establish that the claimant is eligible for benefits. The Commission may require the claimant to assist the Commission in obtaining that information. (11-17-86)

03. Employment Verification. To verify information concerning a victim’s employment, the Commission may require the victim’s employer or employers to complete an Employment Verification form or the Commission may obtain such information from an employer by telephone. (11-17-86)

04. Order. ~~The Commission shall appoint one (1) of its employees to be the Crime Victims Supervisor.~~ After sufficient information has been gathered pursuant to ~~IDAPA 17-04.02~~ Subsection 011.02 of this rule, the ~~Crime Victims Supervisor Commission~~ Commission may enter an award granting or partially granting benefits or an order denying benefits. The ~~Crime Victims Supervisor Commission~~ Commission may also enter orders necessary to further the purposes of the Act. ~~Such awards and orders shall be deemed to be awards and orders of the Commission.~~ (H-17-86)(7-1-10)T

05. Finality of Order. An award or order issued by the ~~Crime Victims Supervisor Commission~~ Commission shall be final and conclusive as to all matters considered in the award or order; provided that within twenty (20) days from the date that such an award or order is issued, the claimant may file a request that the ~~Crime Victims Supervisor Commission~~ Commission reconsider the order or award, or the ~~Crime Victims Supervisor Commission~~ Commission may reconsider the matter on ~~his~~ its own motion, and the award or order of the ~~Crime Victims Supervisor Commission~~ Commission shall be final upon issuance of the order on reconsideration; and provided further that, within forty five (45) days from the date that any award or order is issued by the ~~Crime Victims Supervisor Commission~~ Commission, a claimant may file a Request for Hearing before the Commissioners. The Hearing shall be held in accordance with the procedures set out in Section 012 of these rules. Requests for Hearing and requests that the ~~Crime Victims Supervisor Commission~~ Commission reconsider an order or award shall be deemed filed when received at the Commission’s office in Boise. (H-17-86)(7-1-10)T

06. Recipients of Payments for Medical Services. If, pursuant to any order of the Commission or the Crime Victims Supervisor, it is determined that a claimant is entitled to payment of medical expenses as provided in Section 72-1019(2), Idaho Code, or funeral or burial expenses as provided in Section 72-1019(4), Idaho Code, payment shall be made directly to the medical provider or the provider of funeral or burial services unless the claimant has already paid the provider; if the claimant has already paid the provider, payment shall be made to the claimant. (H-17-86)(7-1-10)T

07. Allowable Payments for Medical Services. The Commission shall pay providers the allowable payment for medical services under these rules adopted in accordance with Section 72-1026, Idaho Code. (7-1-10)T

a. Adoption of Standard. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the allowable payment under the Crime Victims Compensation Act for medical services provided by providers other than hospitals and ASCs. The standard for determining the allowable payment for hospitals and ASCs shall be: (7-1-10)T

- i. For large hospitals: Eighty-five percent (85%) of the reasonable inpatient charge. (7-1-10)T
- ii. For small hospitals: Ninety percent (90%) of the reasonable inpatient charge. (7-1-10)T
- iii. For ambulatory surgery centers (ASCs) and hospital outpatient charges: Eighty percent (80%) of the reasonable charge. (7-1-10)T
- iv. Surgically implanted hardware shall be reimbursed at the rate of actual cost plus fifty percent (50%). (7-1-10)T
- v. Paragraph 011.07.e. of this rule, shall not apply to hospitals or ASCs. The Commission shall determine the allowable payment for hospital and ASC services based on all relevant evidence. (7-1-10)T

b. Conversion Factors. The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
DESCRIPTION	CODE RANGE(S)		CONVERSION FACTOR
Anesthesia	00000 - 09999		\$60.05
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	\$144.48
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	\$129.00
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	\$113.52

MEDICAL FEE SCHEDULE			
<u>DESCRIPTION</u>	<u>CODE RANGE(S)</u>		<u>CONVERSION FACTOR</u>
<u>Surgery - Group Four</u>	20000 - 20615 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999	<u>Musculoskeletal System</u> <u>Respiratory & Cardiovascular</u> <u>Digestive System</u> <u>Urinary System</u> <u>Endocrine System</u> <u>Spine & Spinal Cord</u> <u>Nerves & Nervous System</u> <u>Eye & Ear</u>	<u>\$87.72</u>
<u>Surgery - Group Five</u>	10000 - 12999 29000 - 29799	<u>Integumentary System</u> <u>Casts & Strapping</u>	<u>\$69.14</u>
<u>Radiology</u>	70000 - 79999	<u>Radiology</u>	<u>\$87.72</u>
<u>Pathology & Laboratory</u>	80000 - 89999	<u>Pathology & Laboratory</u>	<u>To Be Determined</u>
<u>Medicine - Group One</u>	90000 - 90799 94000 - 94999 97000 - 97799 97800 - 98999	<u>Immunization, Injections, & Infusions</u> <u>Pulmonary / Pulse Oximetry</u> <u>Physical Medicine & Rehabilitation</u> <u>Acupuncture, Osteopathy, & Chiropractic</u>	<u>\$46.44</u>
<u>Medicine - Group Two</u>	90800 - 92999 96040 - 96999 99000 - 99607	<u>Psychiatry & Medicine Assessments & Special Procedures</u> <u>E / M & Miscellaneous Services</u>	<u>\$66.56</u>
<u>Medicine - Group Three</u> 93000 - 93999 95000 - 96020		<u>Cardiography, Catheterization, & Vascular Studies</u> <u>Allergy / Neuromuscular Procedures</u> <u>\$72.24</u>	

(7-1-10)T

c. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996.

(7-1-10)T

d. Adjustment of Conversion Factors. The conversion factors set out in this rule may be adjusted each fiscal year (FY), starting with FY 2012, as determined by the Commission.

(7-1-10)T

e. Services Without a CPT Code, RVU or Conversion Factor. The allowable payment for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable

charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 011.07.b. of this rule, determine the allowable payment for that service, based on all relevant evidence.

(7-1-10)T

f. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows:

(7-1-10)T

i. Modifier 50: Additional fifty percent (50%) for bilateral procedure.

(7-1-10)T

ii. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure.

(7-1-10)T

iii. Modifier 80: Twenty-five percent (25%) of coded procedure.

(7-1-10)T

iv. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants.

(7-1-10)T

078. **Wage Loss Benefits.** For the purpose of determining compensation benefits under Sections 72-1019(1) and 72-1019(3), Idaho Code, “wages received at the time of the criminally injurious conduct” shall be the victim’s gross weekly wage; which shall be determined as follows:

(11-17-86)(7-1-10)T

a. If the wages were fixed by the year, the weekly wage shall be the yearly wage divided by fifty-two (52).

(11-17-86)

b. If the wages were fixed by the month, the weekly wage shall be the monthly wage multiplied by twelve (12) and divided by fifty-two (52).

(11-17-86)

c. If the wages were fixed by the week, the amount so fixed shall be the weekly wage. (11-17-86)

d. If the wages were fixed by the hour, and the victim worked or was scheduled to work the same number of hours each week, the weekly wage shall be the hourly rate times the number of hours that the victim worked or was scheduled to work each week, plus one-half (1/2) the hourly wage times the number of hours worked or scheduled each week in excess of forty (40) hours if the victim was paid time-and-a-half for work in excess of forty (40) hours per week.

(11-17-86)

e. If the wages were fixed by the hour and the victim did not work the same number of hours each week, or if the victim was paid on a piecework or commission basis, the weekly wage shall be computed by averaging the amounts that the victim was paid during his last four completed pay periods prior to the criminally injurious conduct and converting that amount to a weekly basis using a method consistent with parts 1 through 3 of this rule; provided that, if the victim was employed for less than four (4) pay periods before the criminally injurious conduct, the average shall be computed based upon the time period that he worked.

(11-17-86)

f. If none of the above methods are applicable, the weekly wage shall be computed in a manner consistent with the above methods.

(11-17-86)

089. **Treating Physician.** A victim may choose his own treating physician. If, after filing an Application for Compensation, a victim changes physicians without prior approval of the Commission, or if, without prior approval of the Commission, he seeks treatment or examination by a physician to whom he was referred by his treating physician, the Commission may deny payment for such treatment or examination.

(11-17-86)

0910. **Overpayment.** If the Commission erroneously makes payments to which a claimant is not entitled, the Commission may reduce future payments to that claimant by an amount equal to the overpayment or request a refund when overpayments are made to either the claimant or the provider.

(11-17-86)(7-1-10)T

101. Limit on Compensation. Compensation payable under Sections 72-1019(7)(a) and 72-1019(7)(b), Idaho Code, may not exceed twenty thousand dollars (\$20,000). Compensation payable to a victim or his dependents under Sections 72-1019(7)(a) and 72-1019(7)(b), Idaho Code, when added to compensation payable, under Sections 72-1019(2) and 72-1019(4), Idaho Code, may not exceed twenty-five thousand dollars (\$25,000).

~~(11-17-86)(7-1-10)T~~

11. Weekly Compensation Benefits If Victim Employable But Not Employed. If a victim was employable, but not employed at the time of the criminally injurious conduct and as a result of that conduct has no reasonable prospect of being regularly employed in the normal labor market, he shall receive benefits pursuant to Section 72-1019(7)(a), Idaho Code, as follows, only until the victim has a reasonable prospect of being regularly employed in the normal labor market, or for a shorter period as determined by the Commission. ~~(11-17-86)(7-1-10)T~~

a. If, at the time of the injurious conduct the victim was receiving unemployment benefits, and as a result of that conduct the victim becomes ineligible for those benefits, the claimant's weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred and fifty dollars (\$150) or his weekly benefit amount under the Employment Security Law. ~~(11-17-86)(7-1-10)T~~

b. If, at the time of the criminally injurious conduct the victim was unemployed, but scheduled to begin employment on a date certain, and if he was unable to work for one (1) week as a result of that conduct, weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred and fifty dollars (\$150) or two-thirds (2/3) of the amount that he would have earned at his scheduled employment, and those benefits shall be payable beginning on the date that his employment was scheduled to begin. ~~(11-17-86)(7-1-10)T~~

c. If, prior to the criminally injurious conduct the victim was performing necessary household duties which he is disabled from performing as a result of that conduct, and it is necessary to employ a person who does not reside in the victim's house to perform those duties, the victim shall receive weekly benefits under the Crime Victims Compensation Act equal to the amount paid to the person so employed, but not exceeding one hundred and fifty dollars (\$150) per week. ~~(11-17-86)(7-1-10)T~~

d. In other circumstances, the Commission may award an amount it deems appropriate. (11-17-86)

123. Effective Date. Benefits shall be paid only to claimants whose Applications for Compensation are based upon criminally injurious conduct which occurred on or after July 1, 1986. (11-17-86)

012. HEARING PROCEDURES.

01. Request for Hearing. If a Request for Hearing is filed, an informal hearing shall be held. The Commission may conduct the hearing or it may assign the matter to a Commissioner or Referee. If the matter is assigned to a Commissioner or a Referee, the Commissioner or Referee shall submit recommended findings and decision to the Commission for its review. (11-17-86)

02. Recommendations. If the Commission does not approve the recommendations of a member or Referee, the commission may (1) review the record and enter its own findings and decision, (2) conduct another informal hearing and issue a decision based upon the record of both hearings, or (3) assign the matter to another member or Referee to conduct another informal hearing and make recommendations pursuant to Subsection 012.01 above based upon the record of both hearings. (11-17-86)

03. Notice of Hearing. The Commission shall give the claimant at least ten (10) days' advance written notice of the time and place of hearing and of the issues to be heard, either by personal service or certified mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party at his last known address as shown in the records and files of the Commission. Evidence of service by certificate or affidavit of the person making the same shall be filed with the Commission. ~~(11-17-86)(7-1-10)T~~

04. Transcript of Hearing. All hearings shall be tape-recorded. In addition, the Commission may arrange for a stenographic or machine transcription of any hearing. (11-17-86)

05. Record. At the hearing, the Application for Compensation filed by the claimant and any other documents in the Commission's file which contain information relevant to the issues in the case, shall be admitted into the record. Such documents shall be marked for identification and the record shall specify that those documents are admitted. The Commission, member, or Referee conducting the hearing shall give those documents the weight that is appropriate under the circumstances of the particular case. ~~(11-17-86)~~(7-1-10)T

06. Evidence. At the hearing, after the claimant has presented his evidence, the Commission, or the Commissioner or Referee conducting the hearing, shall allow an employee of the Commission to present evidence. After the presentation of evidence by an employee of the Commission, the Commission, or the Commissioner or Referee conducting the hearing may, in its or his discretion, allow any other person to testify. ~~(11-17-86)~~(7-1-10)T

07. Finality of Decision. After a hearing, the decision of the Commission shall be final and conclusive as to all matters adjudicated; provided that, within twenty (20) days from the date that such decision is issued, the claimant may file a Motion for Reconsideration or the Commission may reconsider the matter on its own motion, and the decision shall be final upon issuance of the order on reconsideration. ~~(11-17-86)~~(7-1-10)T

08. Commission Review. At the request of the claimant or on its own motion, the Commission may review and amend any final order or award, within three (3) years of the date of issue of such order or award; ~~(11-17-86)~~(7-1-10)T

- a. If there is a change in circumstances which affects the claimant's entitlement to benefits; (11-17-86)
- b. To correct a manifest injustice; (11-17-86)
- c. If the order or award is based upon facts which were misrepresented or which were not fully disclosed; or (11-17-86)
- d. To comply with the annual review requirements of Section 72-1021, Idaho Code. (11-17-86)

09. Subpoenas. Subpoenas shall be served in the manner provided by the Idaho Rules of Civil Procedure. Witness fees and mileage shall be in the amounts provided by the Idaho Rules of Civil Procedure and the Claimant shall pay the fees of any witness who is subpoenaed to testify in his behalf. (11-17-86)